Faisal @ Ibrahim bin Hj Siraj & Anor v Pentadbir Tanah Daerah Hulu Langat & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(NCvC)(W)-238–05 OF 2021
RAVINTHRAN, AZMAN ABDULLAH AND LIM CHONG FONG JJCA
23 NOVEMBER 2023

Land Law — Ownership — Dispute of — Two issue documents of title issued for same plot of land — Appellants claimed ownership over land — Fourth respondent's counterclaim allowed by High Court — Whether appellants were real owners of land

This was an appeal by the appellants ('the plaintiffs') against the decision of the High Court in which the epicentre of the disputes between the plaintiff and the respondents ('the defendants') was evolving around a land ('Lot 5633') whereby there were two issued documents of title issued for the same plot of land. By way of summary, part of Lot 5633 had been required for acquisition for the purposes of a highway project that involved the federal government through the Department of Director General of Lands and Mines Selangor ('JKPTG'). The fourth defendant ('D4') had received a letter from JKPTG asking for the status of Lot 5633 because after land search was conducted, Lot 5633 did not exist and was replaced by another lot of land. D4 was approached by the seventh defendant ('D7') who said that he was the registered owner of Lot 5633 and a title document was submitted. After examining the title document and considering that there was no claim made by another party on Lot 5633 at that time, D4 was satisfied that such title document was issued by the Hulu Langat Land Office and concluded that there was error resulting in records regarding Lot 5633 nonexistent. D4 had made correction by establishing the ownership of Lot 5633 and issued a new title document for Lot 5633 to D7. Subsequent to that D7 requested for the release of compensation for land acquisition of Lot 5633 and D7 had received compensation for the amount of RM1,907,620. However, D4 abruptly received a complaint from the first plaintiff who claimed that Lot 5633 which belonged to him was trespassed due to the construction of the highway project. Upon investigation, D4 found that the plaintiffs were the real owners of Lot 5633. Mistake occurred during the replacement process from entry in the mukim register ('EMR') to geran mukim ('GM') around 1986. At that time, GM 566 which belonged to D7 was mistakenly registered over Lot 5633, for which GM 566 should have been registered over Lot 843. Due to that mistake, D7 was registered as the landowner of Lot 5633 at that time. A meeting was held where it was decided that: (a) D7 should return the compensation that he received over the land acquisition and to be paid to the real owner; and (b) D4

should make corrections on GM 566 from Lot 5633 to Lot 843 which initially belonged to D7. Therefore, D7 must return the original title of Lot 5633 and in return, he would receive new document title of Lot 843. However, D7, instead of returning the compensation, had disputed the decision of the meeting. The plaintiffs' claim at the High Court against the defendants was dismissed while D7's counterclaimed was allowed. Hence, this appeal.

Held, allowing the appeal and dismissing the cross-appeal:

(1) The status quo of Lot 5633 should remain with the plaintiffs. It was difficult to accept D7's proposition as how they acquired Lot 5633 in the event that D4, who was the one who in charge of the registration, had admitted their mistake. The history of the registered title to Lot 5633 should be carefully examined. Form 14A produced by D7 to prove his claims only showed the transfer from Zawiah bt Hj Zakaria to D7 only pertaining to two lots which were Lot 843 and Lot 2671. According to D4, EMR 5620 which later changed to GM 566 was pertaining to Lot 843. D7's argument that he had bought three plots of land ie Lot 843, Lot 2671 and Lot 5633 was not sustainable. Furthermore, if Lot 5633 belonged to him, he should realise the plaintiffs' occupation over the land. The issue of trespass should exist before the land was acquired for a highway concessionaire. The plaintiffs had purchased the land in 1985 when Lot 5633 was a part of Lot 1327 held under GM 471. The plaintiffs were the first who obtained issue document of title of Lot 1327 which later should be renumbered as Lot 5633 as this was the right thing to do by D4 after they did the mistake. It was the typo error that had actually affected the whole thing. This error, even though, not as serious as fraud, should be allowed to be rectified and the plaintiffs be given their rights. It was not too late to correct the error and bring back the status quo prior to the land acquisition. D7 was not entitled to any damages or compensation because he was not deprived of his title and/or interests over his own lands ie Lot 843 and Lot 2671. D7 suffered no loss of not having compensation of RM1,907,620 because Lot 5663 did not belong to him from the very beginning. The compensation would follow the rightful owner of Lot 5663 ie the plaintiffs (see paras 26–33 & 36).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu ('plaintif') terhadap keputusan Mahkamah Tinggi di mana pusat pertikaian antara plaintif dan responden ('defendan') adalah berkenaan satu tanah ('Lot 5633') di mana terdapat dua dokumen hakmilik yang dikeluarkan untuk sebidang tanah yang sama. Sebagai rumusan, sebahagian daripada Lot 5633 telah diperlukan untuk pengambilan bagi tujuan projek lebuh raya yang melibatkan kerajaan persekutuan melalui Jabatan Ketua Pengarah Tanah dan Galian Selangor ('JKPTG'). Defendan keempat ('D4') telah menerima surat daripada JKPTG meminta status Lot

5633 kerana selepas pencarian tanah dijalankan, Lot 5633 tidak wujud dan digantikan dengan lot tanah lain. D4 telah didekati oleh defendan ketujuh ('D7') yang mengatakan bahawa dia adalah pemilik berdaftar Lot 5633 dan dokumen hakmilik telah diserahkan. Setelah meneliti dokumen hakmilik dan memandangkan tiada sebarang tuntutan dibuat oleh pihak lain ke atas Lot 5633 pada masa itu, D4 berpuas hati dokumen hakmilik tersebut dikeluarkan oleh Pejabat Tanah Hulu Langat dan membuat kesimpulan bahawa terdapat kesilapan yang mengakibatkan rekod berkaitan Lot 5633 tiada. D4 telah membuat pembetulan dengan menubuhkan pemilikan Lot 5633 dan mengeluarkan dokumen hakmilik baru untuk Lot 5633 kepada D7. Selepas itu D7 meminta pelepasan pampasan bagi pengambilan tanah Lot 5633 dan D7 telah menerima pampasan sebanyak RM1,907,620. Walau bagaimanapun, D4 secara tiba-tiba menerima aduan daripada plaintif pertama yang mendakwa Lot 5633 miliknya diceroboh akibat pembinaan projek lebuh raya itu. Setelah disiasat, D4 mendapati plaintif adalah pemilik sebenar Lot 5633. Kesilapan berlaku semasa proses penggantian daripada kemasukan dalam daftar mukim ('EMR') kepada geran mukim ('GM') sekitar tahun 1986. Pada masa itu, GM 566 milik D7 telah tersilap didaftarkan di atas Lot 5633, yang mana GM 566 sepatutnya didaftarkan atas Lot 843. Atas kesilapan itu, D7 telah didaftarkan sebagai pemilik tanah Lot 5633 pada masa itu. Satu mesyuarat telah diadakan di mana telah diputuskan bahawa: (a) D7 harus memulangkan pampasan yang diterimanya atas pengambilan tanah dan dibayar kepada pemilik sebenar; dan (b) D4 harus membuat pembetulan pada GM 566 dari Lot 5633 kepada Lot 843 yang pada mulanya adalah milik D7. Oleh itu, D7 harus memulangkan hakmilik asal Lot 5633 dan sebagai balasan, dia akan menerima hakmilik dokumen baharu Lot 843. Walau bagaimanapun, D7, daripada memulangkan pampasan, telah mempertikaikan keputusan mesyuarat itu. Tuntutan plaintif di Mahkamah Tinggi terhadap defendan telah ditolak manakala tuntutan balas D7 dibenarkan. Oleh itu, rayuan ini.

Diputuskan, membenarkan rayuan dan menolak rayuan balas:

(1) Status quo Lot 5633 harus kekal dengan plaintif. Sukar untuk menerima cadangan D7 dengan bagaimana mereka memperoleh Lot 5633 sekiranya D4, yang bertanggungjawab dalam pendaftaran, telah mengakui kesilapan mereka. Sejarah hak milik yang didaftarkan kepada Lot 5633 harus diteliti dengan teliti. Borang 14A yang dikeluarkan oleh D7 untuk membuktikan tuntutannya hanya menunjukkan pemindahan daripada Zawiah bt Hj Zakaria kepada D7 hanya berkaitan dengan dua lot iaitu Lot 843 dan Lot 2671. Menurut D4, EMR 5620 yang kemudiannya ditukar kepada GM 566 adalah berkaitan dengan Lot 843. Hujahan D7 bahawa dia telah membeli tiga bidang tanah iaitu Lot 843, Lot 2671 dan Lot 5633 adalah tidak dapat dipertahankan. Tambahan lagi, jika Lot 5633 adalah miliknya, dia harus menyedari pendudukan plaintif ke atas tanah itu. Isu pencerobohan sepatutnya wujud sebelum

tanah itu diambil untuk pemegang konsesi lebuh raya. Plaintif-plaintif telah membeli tanah itu pada tahun 1985 apabila Lot 5633 adalah sebahagian daripada Lot 1327 yang dipegang di bawah GM 471. Plaintif-plaintif adalah orang pertama yang memperoleh dokumen terbitan hakmilik Lot 1327 yang kemudiannya harus dinomborkan semula sebagai Lot 5633 kerana ini adalah perkara yang betul untuk dilakukan oleh D4 selepas mereka melakukan kesilapan. Ralat ejaan yang sebenarnya telah menjejaskan keseluruhannya. Kesilapan ini, walaupun, tidak begitu teruk seperti penipuan, harus dibenarkan untuk diperbetulkan dan plaintif diberi hak mereka. Masih belum terlambat untuk membetulkan kesilapan dan mengembalikan status quo sebelum pengambilan tanah. D7 tidak berhak mendapat sebarang ganti rugi atau pampasan kerana dia tidak dilucutkan hakmilik dan/atau kepentingan ke atas tanahnya sendiri iaitu Lot 843 dan Lot 2671. D7 tidak mengalami kerugian kerana tidak mendapat pampasan sebanyak RM1,907,620 kerana Lot 5663 bukan milik kepadanya sejak awal lagi. Pampasan akan mengikut pemilik sah Lot 5663 iaitu plaintif (lihat perenggan 26–33 & 36).]

Cases referred to

Cheong Wai Kwan (sebagai wasi dan pemegang amanah kepada harta Cheong Weng Sun (si mati) & Anor v Pentadbir Tanah Petaling & Anor (pendaftar hakmilik tanah Negeri Selangor & Anor, third party) [2019] MLJU 140; [2019] 1 LNS 136, HC (refd)

Pendaftar Hakmilik Negeri Selangor v Caesius Development Sdn Bhd & Ors and another appeal [2020] MLJU 25; [2020] 3 CLJ 327, CA (refd)

See Leong Chye @ Sze Leong Chye & Anor v United Overseas Bank (M) Bhd and another appeal [2021] 5 MLJ 759, FC (refd)

Tan Chiw Thoo v Tee Kim Kuay [1997] 2 MLJ 221; [1997] 1 CLJ 541, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 69(5)
Federal Constitution
Land Acquisition Act 1960 s 36
National Land Code ss 22, 340(2), (2)(c), 380, Form 14A
Rules of Court 2012 O 34 r 2(4), O 92 r 4

Appeal from: *Faisal @ Ibrahim bin Haji Siraj & Anor v Ahmad Zaki Sendirian Berhad & Ors* [2020] MLJU 108 (High Court, Shah Alam)

Selva Kumaran a/l Kamalanathan (with Edieka Isma Danieal bin Kaswadi) (Rose Hussin) for the appellants.

Khairul Nizam bin Abu Bakar (with Husna bt Abdul Halim) (Selangor State Legal Advisor's Office) for the first, second and third respondents.

Kelly Khoo Seo Ju (with Qamarina Aqilah) (Malis & Khoo) for the fourth respondent.

Azman Abdullah JCA (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal by the appellants (plaintiffs) against the decision of the High Court dated 9 April 2021 in which the epicentre of the disputes between the plaintiff and the respondents/defendants is evolving around the land held under GM 6026, Lot 5633, Negeri Selangor, Daerah Hulu Langat, Mukim Hulu Langat ('Lot 5633') whereby there are two issued documents of title issued for the same plot of land.

[2] The High Court had dismissed the plaintiffs' claim and allowed the counterclaim of the fourth respondent (seventh defendant) and ordered as follows:

> Maka adalah diperintahkan bahawa tuntutan balas defendan ketujuh adalah dibenarkan saperti berikut:
>
> (1) Satu perintah pengisytiharan bahawa hartanah tersebut masih kepunyaan defendan ketujuh;
>
> (2) Satu pengisytiharan bahawa suratan hak milik kepunyaan dtpegang oleh defendan ketujuh iaitu GM 566, Lot 5633 Negeri Selangor, Daerah Hulu Langat 'Hakmilik Februari 2016' adalah sah di sisi undang-undang;
>
> (3) Satu pengisytiharan bahawa suratan hak milik kepunyaan dipegang oleh plaintif-plaintif iaitu GM 6026, Lot 5633, Negeri Selangor, Daerah Hulu Langat 'Hakmilik September 2016' adalah tidak sah di sisi undang-undang;
>
> (4) Satu perintah bahawa hak milik September 2016 yang didaftarkan di bawah nama plaintif-plaintif diserahkan oleh plaintif-plaintif kepada Defendan keempat dalam tujuh (7) hari dari tarikh penghakiman ini untuk pembatalan.
>
> (5) Satu injunksi mandatori bahawa defendan-defendan keempat sehingga keenam, secara bersama atau berasingan mengambil segala langkah yang diperlukan dan membuat memorial yang mencukupi untuk mengefekkan pembatafan hakmilik September 2016 dan mengefekkan hakmillikan hartanah tersebut berpihak kepada defendan ketujuh menurut Hakmilik Februari 2016;
>
> (6) Satu perintah pengisytiharan bahawa jumlah pampasan RM1,907,620.00 yang dibayar kepada defendan ketujuh adalah sah dan dilakukan menurut Akta Pengambilan Tanah 1960 kerana Defendan ketujuh merupakan tuan punya berdaftar dan benefisial hartanah tersebut;

A (7) Satu perintah bahawa plaintif-plaintif menyerahkan milikan kosong hartanah tersebut kepada defendan ketujuh dalam masa (7) hari dari tarikh penghakiman ini;

(8) Kos sebanyak RM40,000.00 dibayar oleh plaintif-plaintif kepada defendan ketujuh; dan

B (9) Kos sebanyak RM5,000.00 dibayar oleh defendan-defendan keempat sehingga keenam kepada defendan ketujuh.

C **[3]** The plaintiffs are aggrieved by the decision and hence appeal against the fourth to seventh defendants. The seventh defendant also filed cross-appeal after being dissatisfied with the decision of the learned judicial commisioner and applies to this court to vary the decision of the High Court. The reliefs sought by the seventh defendant against the appellants as in encl 11 are follows:

D (a) declaration order related to trespass to land (encroachment); and

(b) damages as a result of trespass to land (encroachment) for an amount of RM145,530 or whichever amount is assessed by this court.

E **[4]** We heard the appeal on 1 September 2023 and now give our decision on 22 November 2023. Having duly considered the appeal records and submissions of counsel, we unanimously decided to allow the plaintiffs' appeal and dismiss the seventh defendant's cross-appeal. Our reasons for allowing the appeal now follow.

F **[5]** For convenience, we shall refer to the parties by the titles assigned to them in the High Court. The appellants shall be referred to collectively as 'plaintiffs'. The respondents shall be referred as follows:

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Respondent	Name	Defendant at the High Court
1	Pentadbir Tanah Daerah Hulu Langat	Fourth Defendant ('D4')
2	Pengarah, Jabatan Tanah Dan Galian Negeri Selangor Darul Ehsan	Fifth Defendant ('D5')
3	Kerajaan Negeri Selangor Darul Ehsan	Sixth Defendant ('D6')
4	Mond Shukor bin Omar	Seventh Defendant ('D7')

H

I BACKGROUND FACTS

[6] By way of summary, part of said Lot 5633 has been required for acquisition for the purposes of the Highway Project East Klang Valley ('EKVE') Hulu Langat District, Selangor in which the project involves the

federal government through the Department of the Director General of Lands and Mines (Federal) State of Selangor ('JKPTG'). On or about January 2016, D4 had received a letter from JKPTG asking for the status of Lot 5633 because after land search was conducted, Lot 5633 does not exist and is replaced by another lot of land.

[7] Subsequent to that letter, D4 was approached by the D7 who said that he is the registered owner of Lot 5633, and he insisted that a decision be made on the status Lot 5633 and its ownership.

[8] Therefore, on 3 February 2016, a meeting was held to discuss this matter with the attendance of officer from D4, JKPTG, D7 and his lawyer. In the discussion, D7 submitted a title document as in Form 5D — Geran Mukim GM566, Lot 5633, Batu 15 3/4 Dusun Tua which was registered on 16 January 1986 ('P5').

[9] After examining the title document and comparing it with the records kept in Hulu Langat Land Office and after considering that there is no claim made by another party on Lot 5633 at that time, D4 was satisfied that the such title document was issued by the Hulu Langat Land Office and concluded that there was error in SPTB resulting in records regarding Lot 5633 nonexistent.

[10] It is therefore, on 16 February 2016, in pursuant to s 380 of the National Land Code (Revised—2020) (Act 828) ('the NLC'), D4 has made correction by establishing the ownership of Lot 5633 in SPTB and issued a new title document for Lot 5633 to D7. Subsequent to that D7 submitted Form P9 to JKPTG and requested for the release of compensation for land acquisition of Lot 5633. On 8 March 2016, D7 had received compensation for the amount of RM1,907,620.

[11] Be that as it may, around April 2016, D4 abruptly received a complaint from the first plaintiff who claimed that Lot 5633 which belongs to him was trespassed due to the construction of EKVE. Since there were two claims of ownership over the same Lot 5633, D4 had conducted investigation to identify who is the real owner of Lot 5633.

[12] Upon the investigation, D4 found that the first plaintiff and the second plaintiff are the real owners of Lot 5633. Mistake occurred during the replacement process from entry in the Mukim Register ('EMR') to Geran Mukim ('GIVI') around 1986. At that time, GM566 which belongs to D7 was mistakenly registered over Lot 5633, for which GM566 should have been registered over the Lot 843. Due to that mistake, D7 was registered as the land owner of Lot 5633 at that time.

[13] Following that, a meeting was held on 26 April 2016 at the Hulu Langat Land Office which aimed to discuss the issue of Lot 5633 ('the meeting'). The meeting was attended by, among others, representative from JKPTG, the first plaintiff and the D7's lawyer. It was the decision in the meeting that:

(a) D7 shall return the compensation that he received over the land acquisition and to be paid to the real owner. JKPTG should monitor this and using the provisions under s 36 of the Land Acquisition Act 1960 to recover compensation from D7; and

(b) D4 shall make corrections under s 380 of the NLC with immediate effect on GM 566 from Lot 5633 to Lot 843 which initially belongs to D7. Therefore, D7 must return the originai title of Lot 5633 and in return, he will receive new document title of Lot 843.

[14] D4 and JKPTG had carried outthe decision of the meeting. However, D7, instead of returning the compensation to JKPTG, had sent letter to D4 dated 28 June 2016 disputing the decision of the meeting. Up to this date, the compensation money is stili with D7.

[15] That was the genesis of the plaintiffs' claims at Shah Alam High Court against the named defendants firstly vide originating summons but then changed to the writ and statement of claim dated 28 January 2019 upon the order of the High Court.

[16] On 17 December 2019, the High Court had struck out the plaintiff's claims on the reason that the plaintiff had failed to comply with the court's instructions to file the cause papers required for trial, ie the bundle of agreed documents, the agreed facts and issues to be tried. Dissatisfied, the plaintiffs moved an appeal to the Court of Appeal in Civil Appeal No B-01 (IM)(NCvC)-35–01 of 2020. The appeal was struck out on 6 July 2020 with an award for cost of RM3,000 in favour of D7 in which the Court of Appeal had allowed the respondents to strike out the appeal based on the reason that the plaintiffs had wrongfully appealed against such order. The plaintiffs should first apply to the High Court in accordance to O 34 r 2(4) of the Rules of Court 2012.

[17] The High Court had then proceeded to hear D7's counterclaims against the plaintiffs, D4, D5 and D6 in which the counterclaims ware allowed and D7 was awarded with costs of RM40,000 on 9 April 2021.

[18] Based on the amended statement of defense and counterclaim, D7 claims that on and about 25 September 1982, D7 had bought three plots of land with a total of RM85,000 through a broker. The three plots of land are Lot 843, Lot 2671 and including Lot 5633. The lands had been charged to

Bank Pertanian Malaysia on or around 7 February 1983 as collateral for the loan and was released on or about 27 June 1995. It was also submitted by D7 that he had visited the lands for few times and even and had instructed the land surveyor to measure the lands and obtain the topographical details of the lands.

[19] The plaintiffs, on the other hand, had submitted that they had purchased the same in 1985 when Lot 5633 was a part of Lot 1327 held under GM 471 as can be seen in the issue document of title dated 13 April 1984 ('the plaintiffs' IDT') as exhibited at pp 47–50 of encl 9 (pp 34–37 of record of appeal Part C, Vol 1). The certified plan by the Survey Department then shows that Lot 1327 after having been resurveyed for an acquisition of road reserve, was renumbered Lot 5633 as exhibited at p 53 of encl 9 (p 40 of record of appeal Part C, Vol 1). It was contended by the plaintiffs that D7's claim on Lot 5633 arises from an issue document of title issued on 16 January 1986 ('D7's IDT'), however, it is to be noted that the plaintiffs' IDT was issued prior to D7's IDT. In fact, the plaintiffs had also tenanted out part of the said Lot 5633 to a telecommunications company, UMobile Sdn Bhd, to build a telecommunication tower on the said land since 12 October 2010 until April 2016 when the land was acquired for a highway concessionaire.

[20] In this case, both plaintiffs and D7 appear to have been ignorant of each other's 'ownership' until an acquisition of part of the said land was undertaken by a highway concessionaire in which D7 was first to approach D4 to claim his ownership and the compensation for the acquisition was paid to him. Following that, D4 had issued a new (computerised) issue document of title dated 16 February 2016 to D7 for GM566, Lot 5633.

DECISION OF THE HIGH COURT

[21] From the grounds of the learned judicial commissioner of the High Court ('the learned JC'), the essence of her decision was of who acquired good title over Lot 5633. The learned JC was of the view that the dispute was over the same land, which is Lot 5633 which she quoted the evidence by Roslan bin Omar (SP1) who is the officer from JUPEM.

[22] The learned JC made her finding by comparing D7's IDT of GM566, Lot 5633 which allegedly purchased on 23 December 1982 from Zawiah bt Hj Zakaria against the plaintiffs' IDT of GM471, Lot 1327 which was purchased by the plaintiffs from Kelsom bt Gamek dan Halimah bt Hj Khatibon 24 October 1984.

[23] The learned JC while allowing D7's counterclaims, held that:

(a) D7 hold infeasibility of titied over Lot 5633 whereby the court was of the view that the purchased of the land by D7 was valid and D7 is a bona

fide purchaser for value without notice. The registration was completed by D4 in 1982. Besides, D7 preceded the plaintiffs in terms of time, ie during the ownership originally in 1982 and also in February 2016 for land acquisition;

(b) the learned JC also took into account that the plan of Lot 5633 was included in the Part A of the common bundle and concluded that as such, the parties had agreed on the authenticity and the contents of document in which GM566, Lot 5633 belongs to D7;

(c) even though D4 submitted that D7's title to Lot 5633 is defeasible based on the reason that Form 14A and Form 16A showed that Lot 5633 did not belongs to D7 in 1982 as well as 1983 and thus, his ownership can be denied pursuant to s 340(2) of the NLC (registration was based on insufficient instruments), nevertheless the learned JC held that D7 had proved his claims based on the documents filed before the court. The court relied on documents in Part A of the common bundle. Based on this admission of the authenticity and correctness of the title plan alone, D7's rights and entitlement over the Land has been indisputably proven;

(d) the court also accepted the note written by Ustaz Mohd bin Karim dated 25 September 1982 as evidence which showed that Lot 5633 has been sold to D7 in 1982 even though the maker was not called;

(e) the learned JC was also of the view, since D4 had issued new IDT of Lot 5633 to D7 on February 2016, thus D4 has no power to make further amendment to that and issue the new IDT to the plaintiffs. The learned JC relied on the case of *Tan Chiw Thoo v Tee Kim Kuay* [1997] 2 MLJ 221; [1997] 1 CLJ 541 and the case of *Cheong Wai Kwan (sebagai wasi dan pemegang amanah kepada harta Cheong Weng Sun (si mati) & Anor v Pentadbir Tanah Petaling & Anor (pendaftar hakmilik tanah Negeri Selangor & Anor, third party)* [2019] MLJU 140; [2019] 1 LNS 136. In furtherance, D4 to D6 were estopped from saying that issuance of IDT of Lot 5633 to D7 was an error and for the purpose of correcting the error, such IDT has to be revoked and new IDT to be issued to the plaintiffs;

(f) the learned JC went further by stated that in this case, no fraud was pleaded against D7 because D7 obtain the title by valid instruments and also no fraud was pleaded against D4 to D6; and

(g) the learned JC also held that D4 to D6 were not in breach of their statutory duties or the provisions of Federal Constitution and were not negligent which should be penalised in costs and damages. However, the court used its discretionary power under O 92 r 4 of the Rules of Court 2012 to order D4 to D6 to pay minimal sum of RM5,000 to D7. No order to injunct D4 to D6 was given by the court but D4 and D6 are obliged to ensure that the court's order is duly enforced.

THE APPEAL

[24] The grounds of appeal as per the memorandum of appeal stated as follows:

1. Yang Arif Hakim Mahkamah Tinggi terkhilaf dari segi undang-undang dan fakta apabila membenarkan tuntutan balas Responden Keempat iaitu satu Perintah Pengisytiharan bahawa suratan hakmilik dipegang oleh Perayu-Perayu iaitu, GM6026, Lot 5633, Mukim Hulu Langat, Daerah Hulu Langat, Negeri Selangor (Hakmilik September 2016) adalah tidak sah dan terbatal tanpa mempertimbangkan bahawa Perayu-Perayu merupakan tuanpunya dan berdaftar dan benefisial Hakmilik September 2016 tersebut pada semua masa material.

2. Yang Arif Hakim Mahkamah Tinggi terkhilaf dari segi undang-undang dan fakta apabila membenarkan perintah pengisytiharan bahawa Hakmilik September 2016 yang dipegang oleh Perayu-Perayu adalah tidak sah dan terbatal tanpa mengambil kira fakta bahawa Responden-Responden Pertama, Kedua dan Ketiga membuat siasatan atas Hartanah tersebut dan telah pada 26.04.2016 memutuskan bahawa pemilik sebenar bagi Hakmilik September 2016 tersebut merupakan Perayu-Perayu dan bukannya Responden Ketujuh.

3. Sehubungan dengan itu, Yang Arif Hakim Mahkamah Tinggi terkhilaf dari segi undang-undang dan fakta apabila membenarkan satu Perintah Pengisytiharan bahawa jumlah pampasan RM1,907,620.00 yang dibayar kepada Responden Keempat adalah sah dan diiakukan menurut Akta Pengambilan Tanah 1960, atas alasan Responden Keempat merupakan tuanpunya berdafiar dan benefisial Hartanah tersebut, tanpa mempertimbangkan bahawa Responden Pertama sehingga Ketiga dalam mesyuarat pada 26.04.2016 telah memutuskan bahawa jumlah pampasan yang dibayar kepada Responden Keempat wajib dikembaiikan kepada pemilik sebenar Hartanah tersebut iaitu Perayu-Perayu.

4. Yang Arif Hakim Mahkamah Tinggi juga terkhilaf dari segi undang-undang dan fakta apabila membenarkan satu perintah bahawa Hakmilik September 2016 yang didaftarkan dibawah nama Perayu-Perayu diserahkan oleh Perayu-Perayu kepada Responden Pertama dalam tujuh (7) hari dari tarkh penghakiman untuk pembatalan dan satu injunksi mandatori bahawa Responden Pertama sehingga Responden Ketiga, secara bersama atau berasingan mengambil segala langkah yang diperlukan dan membuat memorial yang mencukupi untuk mengefekkan pembatalan Hakmilik September 2016 dan mengefekkan hakmiiikan Hartanah tersebut berpihak kepada Responden Keempat menurut Hakmilik Februari 2016 tanpa mengambil kira fakta-fakta bahawa Perayu-Perayu merupakan pemilik berdaftar dan benefisial bagi Hakmilik September 2016.

5. Oleh itu, Yang Arif Hakim Mahkamah Tinggi telah terkhilaf dari segi undang-undang dan fakta apabila membenarkan satu perintah bahawa

A Perayu-Perayu menyerahkan milikan kosong Hartanah tersebut kepada Responden Keempat dalam tujuh (7) hari dari tarikh penghakiman Mahkamah Tinggi tersebut.

SUBMISSIONS

B

[25] On appeal, the parties' submission are summarised as follows:

Parties	Submission
Plaintiffs	The plaintiffs submitted that the learned JC has fallen into error:
C	(a) when she assumed that the D7 had indeed 'purchased' Lot 5633;
	(b) when she used the defeasibility test on whether a titie had indeed been issued for Lot 5633 correctly; and
D	(c) was she used the bona fide purchaser test to decide who had been vested with proper title for Lot 5633.
	It was contended by the plaintiffs that in D7's document of Form 14A (at pp 39–42 of encl 9) which he was purporting to be transferee of in 1982, clearly shown that the titles included in the
E	transfer are Lot 843 (EMR 5620) and Lot 2671 (EMR 5619). There is no mention of Lot 5633. Besides, EMR 5620 which was subsequently reissued as GM566 actually relates to Lot 843. The fact that Lot 843 is a different plot of land than Lot 5633 was not disputed by D7.
F	To add further, the plaintiffs also submit that D7 himself in an action to remove a caveat has stated on oath (by way of an affidavit filed for those purposes) that he is the owner of Lot 843 and not Lot 5633 as shown at p 72 of encl 10. His title to the said Lot 843 was exhibited to the said affidavit at pp 76–79 of encl 10.
G	Therefore, according to the plaintiffs, there is no evidence to show that D7 ever purchased Lot 5633 in 1983. The only reason D7 has been able to allège his ownership of Lot 5633 is because of the error of the land office in issuing an issue document of title to
H	replace EMR 5620, Lot 843 to Lot 5633. This error had been conceded by the land office, as D4.

I

	It was argued by the plaintiffs that the plaintiffs' titie and the D7's title are different titles. According to the plaintiffs, Lot 5633 was previously known as Lot 1327 in which at the time plaintiffs purchased the land, it was GM471, Lot 1327 vide a Form 14A dated 2 April 1985 as at pp 54–57 of encl 9. Lot 1327 was subsequently became Lot 5633 when a portion of it was previously acquired for a road reserve. This fact is not disputed and in fact accepted by the respondent's counsel in his cross-examination of witnesses from the land office. This fact was also reflected in the survey map as at p 53 of enclosure. Therefore, according to the plaintiffs, they are the registered owner of Lot 5633 since 2 April 1985. D4's action to include Lot 5633 into GM566 belonging to D7 is clearly untenable because Lot 5633 was registered in the plaintiffs' names. Such 'transfer' to D7 is clearly void for insufficient instrument under s 340 of the NLC since no Form 14A has been shown for such a 'transfer'. It is the submission of the plaintiffs that the learned JC had referred to Form 14A (the main document relied by D7) but the learned JC did not seem to appreciates that the Form 14A does not contain the said Lot 5633 (or its previous designation, Lot 1327). Thus, it was submitted by the plaintiffs that D7 has actually failed to prove his right to the remedies which was wrongfully allowed by the learned JC.
D4–D6	Summarily, learned counsel for D4 to D6 submitted that the learned JC erred when she relied to Form 14A to prove the transfer of Lot 5633 to D7. In this regard, according to D4 to D6, that Form 14A clearly shows the transfer from Zawiah bt Hj Zakaria to D7 pertaining to two lots which is Lot 843 and Lot 2671. Lot 843 was originated from EMR 5620 and thus according to D4, it was not related to Lot 5633 from the very beginning. D7 had failed to prove that Lot 5633 was indeed belongs to him from 23 December 1982 because none Lot 843 or Lot 2671 are related to Lot 5633 which was claimed by D7. It was submitted that the learned JC was lack of judicial appreciation of the evidence when she held that D7 hold infeasibiiity of titled over Lot 5633 whereby the purchased of the land by D7 was valid and D7 is a bona fide purchaser for value without notice. The learned JC had relied on land plan dated 29 April 2002, without taking into account other contemporaneous documents namely P1 dated 23 December 1982, P5 dated 16 January 1986 and P6 dated 5 February 1983.

	D4 had conducted their investigation and had made a report on this. It is the finding of the investigation that Lot 5633 is actually belongs to the plaintiffs. D4 had admitted that they had mistakenly registered Lot 5633 under D7's name. D4 had took a step to rectify the mistake and a meeting was conducted 26 April 2016 in which the result of the meeting was for the correction to be done. Learned counsel for D4 to D6 also submitted that all their actions was made in good faith and protected by law pursuant on s 22 of the NLC. In this regard, the learned JC was right in her decision that there was no breach of statutory duty and/or the duty of care of D4 to D6. On the issue as to whether D4 to D6 should compensate and/or indemnify D7 over the losses, it was submitted that D7 was not prejudiced and had not suffered any loss as a result of the actions of D4 to D6. The counsel referred to the case of Pendaftar Hakmilik Negeri Selangor v Caesius Development Sdn Bhd & Ors and another appeal [2020] MLJU 25; [2020] 3 CLJ 327 in which the claims for damages should not be allowed as D7 failed to prove his claims. There is no evidence to prove the loss he suffered. Lot 843 which belongs to D7 was never affected by the land acquisition. Besides, considering that 'Lot 5633' which claimed to be owned by the D7 is actually, refer to Lot 843 and there is no damage occurred on Lot 843, then the issue of violation of D7's constitutional rights to own and enjoy his land is also not applicable. It was also submitted that the plaintiffs also do not entitle to any indemnity for the reason that the plaintiffs only demand for a counterclaim of D7 is dismissed with costs and the plaintiffs' right and title over GM 6026 are maintained and confirmed by the court. The plaintiffs are also not entitled to claim for any damages relating to the losses arising from the rental agreement entered into between the plaintiffs and U-Mobile Sdn Bhd dated 12 October 2010. The reason being, such agreement was in contrary to the type of land usage that is 'Agriculture' as stated in title document ('D25') at pp 51–52 of encl 9 and in fact the first plaintiff himself admitted this during cross-examination. Further that that, it was also submitted that D7 could not rely on the omnibus prayer in the pleadings to justify the claims that were not pleaded because the claims are substantial claims which must be pleaded and proven specifically. Lastly, D4 and D6 argued that the learned JC had erred in allowing mandatory injunction order against D4 to D6.

D7	Learned counsel for D7 on the other hand submitted that the learned JC had considered all evidence at trial and was correct in allowing the declaration that the title held by the plaintiffs was illegal and void. D7 was a bona fide purchaser for value without notice, and had rightfully acquired indefeasible title of the Lot 5633 in priority over the plaintiffs. It was also submitted that the learned JC did not erred in considering a hand written note of Ustaz Mohd bin Karim dated 25 September 1982 which provides evidence that D7 had indeed purchase the Lot 5633 in 1982. Counsel for D7 went further in his submission that the learned JC had considered all evidence with regards to the investigation conducted by D4 and held that D4 to D6 had acted in breach of their statutory duties, in breach of the Federal Constitution, and also were grossly negligent, and therefore should be penalised in costs and damages. According to D7, D4 cannot re-alienate the same Lot 5633 to the appellant in September 2016 unless the land is reverted to the state. The purported issuance of title in September 2016 to the plaintiffs was therefore a nullity. By recognising that the plaintiff as the rightful owner of Lot 5633 and issuing the September 2016 title to thereto was said to be not only in ultra vires of D4 to D6 powers but also allow them to approbate and reprobate at its whims and fancies. It was also contended that the learned JC was correct in holding that since D7 was the owner of the Lot 5633, then it follows that ali rights and benefits derived from the property, must rightfully be accorded to D7. With regard to D7's cross appeal in encl 11, it was submitted that the learned JC had erred in fact and/or in law after failing to consider that the reliefs for a declaration against the appellants for encroachment of the land and damages thereto was a natural consequence after having found that D7 was the registered and beneficial owner of Lot 5633. in this regard, the learned JC has the power to order that D4 to D6 being the real wrongdoer in this case, do indemnify the plaintiffs for all losses and damages awarded to D7 arising out of this case. Thus, D7 prayed for the following punitive costs/exemplary damages to be paid to D7 against D4 to D6: (a) exemplary damages in the sum of RM45,000; (b) damages for loss of dealings and deprivation of land in the sum of RM100,000;

	(c) reimbursement for legal fees incurred by D7 on a solicitor-client basis, in the sum of RM200,000 and the service tax payable on this amount; (d) D4 to D5 to pay on an indemnity basis, all damages and costs ordered to be paid by this honourabfe court from the plaintiffs to D7, including damages for encroachment of land; and (e) costs.

OUR DECISION

[26] After careful consideration and on evaluation of the totality of the evidence before this court, we are of the opinion that the status quo of Lot 5633 should remain with the plaintiffs. It is difficult to accept D7's proposition as how they acquired Lot 5663 in the event that D4, who is the one who in charge of the registration, had admitted their mistake. Jerald Gomez, in an article entitled 'Section 340 of the National Land Code, Before and After *Boonsom Boonyanit*' as published in [2008] 1 MLJ Ixxii, said that 'The register is meant to be the mirror of the title deeds, containing ail the information one needs to know on a particular piece of land'. Thus, if the keeper of the register admitted that there is a mistake, it is our firm believe that such mistake should be rectified so as to ensure the registration is kept correctly.

[27] We are also of the view that the history of the registered title to the land in question, Lot 5633, should be carefully examined and in this regard, we depart from the findings of the learned JC. We have painfully considered this issue and we find that it is in evidence and undisputed fact that Form 14A produced by D7 to prove his claims only shows the transfer from Zawiah bt Hj Zakaria to D7 only pertaining to two lots which are Lot 843 and Lot 2671. According to D4, EMR 5620 which later changed to GM 566 was pertaining to Lot 843. EMR 5620/GM566 is not related to Lot 5633 from the very beginning.

[28] Therefore, we find that D7's argument that he had bought three plots of land with a total of RM85,000 through a broker which are Lot 843, Lot 2671 and including Lot 5633 is not sustainable and does not hold water. Even though there are hand written notes, we could not accept it as an evidence which supports D7's claims over Lot 5633. The reason being, in Form 14A, the transfer was from Zawiah bt Hj Zakaria to D7 and not from Ustaz Mohd bin Karim (who wrote the notes and stated that he had sold Lot 843, Lot 2671 and Lot 5633 to D7 for an amount of RM85,000). To add further, nothing in the evidence proved that Lot 5633 or its previous designation Lot 1327 was transferred from Ustaz Mohd bin Karim to D7.

[29] Furthermore, as submitted by D7 that he had visited the lands for few times and even and had instructed the land surveyor to measure the lands and obtain the topographical details of the lands, we find that if Lot 5633 belongs to him, he should realise the plaintiffs' occupation over the land. The plaintiffs not only occupied the land but also had tenanted out part of the said Lot 5633 to a telecommunications company, UMobile Sdn Bhd, to build a telecommunication tower since 12 October 2010 until April 2016. Therefore, the issue of trespass should exist before the land was acquired for a highway concessionaire with the compensation of RM1,907,620 come into picture.

[30] We agree with the plaintiffs that they had purchased the land in 1985 when Lot 5633 was a part of Lot 1327 held under GM 471. The plaintiffs arguments was reflected in the issue document of title dated 13 April 1984 as exhibited at pp 47–50 of encl 9 (pp 34–37 of record of appeal Part C, Vol 1). It follows that the certified plan by the Survey Department also shows that Lot 1327 after having been resurveyed for an acquisition of road reserve, was renumbered Lot 5633 as exhibited at pp 53 of encl 9 (p 40 of record of appeal Part C, Vol 1).

[31] Therefore, we are of the considered view that the plaintiffs are the first who obtained issue document of title of Lot 1327 which later should be renumbered as Lot 5633 as this was the right thing to do by D4 after they did the mistake.

[32] As decided by the Federai Court in the case of *See Leong Chye @ Sze Leong Chye & Anor v United Overseas Bank (M) Bhd and another appeal* [2021] 5 MLJ 759 the question of whether a title or interest in land was defeasible or indefeasible was a question of mixed fact and law. In our present appeal, we think that it is the typo error that had actually affect the whole thing. This error, even though, not as serious as fraud, should be allowed to be rectified and the plaintiffs be given their rights. This is remediable pursuant to s 340(2)(c) of the NLC.

[33] We make distinction with regard to our present appeal with other land dispute cases pertaining to the defeasibility or indefeasibility of title because in this appeal, there is no element of frauds. It is a just a typo error committed by D4 back in 1986 which only realised by the parties in 2016. We think that it still not too late to correct the error and bring back the status quo prior to the land acquisition.

[34] We are minded of the Federal Court decision in the case of *Pendaftar Hakmilik Negeri Selangor v Caesius Development Sdn Bhd & Ors and another appeal* [2020] MLJU 25 which held as follows:

> As a keeper of all land titles, for a particular state (in this case Selangor) it is

reasonable to impose upon the land office, including the seventh defendant, a duty of cam towards all land owners, to ensure that the landowners' interests are well protected and safeguarded.

[35] However, in our present appeal, there is no evidence that D4 to D6 had been negligent in handling the transfer of the lands. The only mistake occurred at the time they are changing the registration from EMR to GM in which this changing process was done in accordance to the laws.

[36] We also agree with the submission of learned counsel of D4 to D6 that D7 is not entitle to any damages or compensation because he was not deprived of his title and/or interests over his own lands (Lot 843 and Lot 2671) which originally transferred from Zawiah bt Hj Zakaria. D4 suffered no loss of not having compensation of RM1,907,620 because Lot 5663 did not belong to him from the very beginning. The compensation will follow the rightful owner of Lot 5663, which we held to be the plaintiffs.

CONCLUSION

[37] In reaching our conclusion, we were mindful of the fact that learned JC had the audio/visual advantage which this court is deprived of. We are however satisfied that there was a fundamental lapse in the judicial evaluative process. Based on the aforesaid reasons, we allow this appeal by the plaintiffs and therefore set aside the decision of the learned JC dated 9 April 2021. We make the orders pursuant to s 69(5) of the Courts of Judicature Act 1964 as follows:

(a) a declaration that the plaintiffs is the rightful owner of title held under GM 6026, Lot 5633;

(b) a declaration that land title held by D7 under GM 566, Lot 5633 is null and void; and

(c) D7 is to pay costs of RM70,000 here and below to the plaintiffs subject to allocator.

[38] Since we have allowed this appeal by the plaintiffs, the cross-appeal by D7 is now dismissed with no order as to costs.

Appeal allowed and cross-appeal dismissed.

Reported by Nabilah Syahida Abdullah Salleh